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FCC - MAILROOM

Before the
Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Reclassification of License of)	RM-10567
Station KJEL(FM))	
(Lebanon, Missouri))	
)	
TO: Chief, Audio Division)	

MOTION TO ACCEPT LATE-FILED OPPOSITION

Ozark Broadcasting, Inc. ("Ozark"), by its attorney, hereby respectfully requests leave to file its "Opposition to Order to Show Cause", lodged in this proceeding under date of November 4, 2002, even if such opposition is deemed to be out of time. In support thereof, it is alleged

1. On September 20, 2002, the Audio Division purported to release an "Order to Show Cause" proposing to downgrade Ozark's FM station in Lebanon, Missouri, KJEL, from a Class C facility to a Class C0 facility. The order directed the staff to send a copy by certified mail, return receipt requested, directly to **Ozark**. The order further specified that Ozark be afforded 30 days, i.e., until October 21, 2002, to respond.

2. The address given in the Order to Show Cause is a correct address. However, Ozark never received a copy of the order. Furthermore, it does not appear that the FCC staff is in possession of any return receipt establishing that the order was received by Ozark. Finally, no copy of the order was sent to the undersigned counsel, even though the undersigned is listed as counsel of record to Ozark. Therefore, Ozark never received either constructive or actual notice of the order.

3. On November 4, 2002, Ozark did, in fact, file an Opposition to Order to Show

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Cause. A copy was faxed to the FCC and the original and five copies were sent to the FCC by Federal Express for delivery on November 5, 2002. In that Opposition, Ozark indicated that it did, in fact, intend to file an application for full Class C facilities at Station KJEL.

4. The pertinent rule, Section 73.3573, note 4, contemplates that a licensee will have 180 days from the date of filing of an opposition to an order to show cause in which to file an application for a construction permit for full Class C facilities. However, the rule contemplates that the opposition be filed on a timely basis. In this instance, it was not possible for Ozark to file on a timely basis, because Ozark had neither actual nor constructive notice of the issuance of the order. Consideration of fair play, equity and justice require that Ozark's Opposition be accepted, even though it is out of time. Furthermore, the same considerations of fair play, equity and justice require that Ozark be afforded a time period of 180 days from the date of filing of its Opposition in which to file the application for full Class C facilities. That Opposition was formally lodged with the Commission today, through delivery by Federal Express.

5. Therefore, for the above reasons, Ozark respectfully requests that the Audio Division issue an order (a) accepting Ozark's late-filed Opposition; and (b) specifically ruling that Ozark has 180 days from November 5, 2002, in which to file an application for full Class C facilities and thereby prevent the downgrading of Station KJEL to Class C status.

Respectfully submitted,

OZARK BROADCASTING, INC.

November 5, 2002

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

By: 

Lauren A. Colby
Its Attorney

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, or by overnight courier this 5th day of November, 2002, to the offices of the following:

A. Wray Fitch, Esq.
Gammon & Grange, Inc.
8280 Greensboro Drive
7th Floor
McLean, VA 22102

Mr. R. Barthen Gorman
F.C.C.
Mass Media Bureau
445 12th Street, S.W.
Room 3-A224
Washington, D.C. 20554

Peter H. Doyle, Audio Division
FCC
The Portals
445 Twelfth Street, S.W.
Room 2-A267
Washington, D.C. 20554


Traci Maust